

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/788,746
Applicant: Weston *et al.*
Confirmation No.: 6112
Filed: 02/26/2004
Group Art Unit: 1648
Examiner: Chen, Stacy Brown
Title: Structural Proteins of Fish Pancreatic Disease Virus and
Uses Thereof
Attorney Docket: I-1998.376 US D1

October 19, 2007

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

Mail Stop: Issue Fee
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313

Sir/Madam:

In reply to the Notice of Allowance mailed on July 20, 2007 (herein, "Notice of Allowance"), Applicants submit the following request for reconsideration of patent term adjustment. This application for patent term adjustment is accompanied by:

- (1) The fee set forth in §1.18(e); and
- (2) A statement of the facts involved, specifying:
 - (i) The correct patent term adjustment and the basis or bases under § 1.702 for the adjustment;
 - (ii) The relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled;

Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice is 200 days.

The USPTO acknowledges in the Patent Application and Information Retrieval (PAIR) portal that the USPTO is responsible for 295 days of delay. This delay is solely due to a delayed mailing of a Restriction Requirement more than fourteen months after the date on which the captioned application was filed, in violation of 37 C.F.R. §1.702(a)(1). Moreover, the USPTO indicates that Applicant is responsible for 137 days of delay (*i.e.*, the sum of the period calculated under 37 C.F.R. §1.704). Hence, the PAIR portal presently indicates that Applicant is entitled to 158 days of patent term adjustment (*i.e.*, 295 days minus 137 days is 158 days).

The patent term adjustment stated in the Notice of Allowance, however, does not take into account 37 C.F.R. §1.702(b), which increases patent term adjustment due to failure of the USPTO to issue a patent within three years of the actual filing date of the application. If the captioned application issued as a patent on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of the Notice of Allowance (*i.e.*, on January 29, 2008), then the patent will have issued 337 days after the three years. This period overlaps, however, with the USPTO acknowledged 295 days of delay. Hence, if the captioned application issued as a patent on January 29, 2008, the USPTO will have been responsible for 337 days of delay. *Cf.* 37 C.F.R. §1.703(f). In this situation, Applicant should receive 200 days of patent term adjustment (*i.e.*, 337 days of USPTO delay minus 137 days of Applicant delay equals 200 days of patent term adjustment).

III. The Relevant Dates as Specified in §§ 1.703(a) Through (e) for which an Adjustment is Sought and the Adjustment as Specified in § 1.703(f) to which the Patent is Entitled

Applicants do not dispute the delays due to the USPTO or Applicants that are identified in the USPTO's PAIR portal. Accordingly, the relevant dates for these already identified delays are not reiterated here. Instead, Applicants are focusing here upon the delay not identified in PAIR-- namely the delay referred to by 37 C.F.R. §1.703(b).

37 C.F.R. §1.703(b) provides as follows:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued . . .

February 26, 2004 is the date on which the application was filed. Hence, February 27, 2007 is the day after the date that is three years after the date the application was filed. If the captioned application issues as a patent as described in the Notice of Allowance on the Tuesday before the date that is 28 weeks after the mailing of the notice, the patent will have issued on January 29, 2008¹. There are 337 days beginning on February 27, 2007 and ending on January 29, 2008².

Further to 37 C.F.R. §1.703(f), all of the 295 days of USPTO delay already acknowledged by the USPTO as evidenced by PAIR are contained within the aforementioned 337 days. Hence, 337 days is the sum of the periods calculated under paragraphs (a) through (e) of 37 C.F.R. §1.703 that do not overlap.

IV. Whether the Patent is Subject to a Terminal Disclaimer and any Expiration Date Specified in the Terminal Disclaimer

Any patent issuing from the captioned patent application will not be subject to a terminal disclaimer.

V. Any Circumstances During the Prosecution of the Application

¹ The Notice of Allowance was mailed on Friday, July 20, 2007. The date that is 28 weeks later is Friday, February 1, 2008. The Tuesday before this date is Tuesday, January 29, 2008.

² Attached Exhibit A shows the date calculator result between these two days, *but not including* January 29, 2008. Accordingly, the calculation comes to 337 days *after including* January 29, 2008, as required by 37 C.F.R. §1.703(b).

**Resulting in the Patent that Constitute a Failure to Engage in
Reasonable Efforts to Conclude Processing or Examination of such
Application as set Forth in § 1.704**

USPTO's PAIR portal already identifies delay attributed to Applicant that is set forth in 37 C.F.R. §1.704. As stated above, Applicants are not herewith disputing the calculation of this delay, which is calculated to be 137 days.

VI. Corrected Patent Term Adjustment

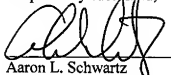
Applicants request that if a patent issues on Tuesday, January 29, 2008, the Patent Term Adjustment be 200 days. Applicants further request that the patent term adjustment be corrected accordingly if the patent issuing from the captioned application issues on another day. Applicants reserve the right to file further petitions or requests seeking other patent term adjustments that cannot be calculated until the issue date of the patent is actually know.

Conclusion

Applicants do not believe that any other fee is due in connection with this filing. If, however, Applicants do owe any such fee(s), the Commissioner is hereby authorized to charge the fee(s) to Deposit Account No. 02-2334. In addition, if there is ever any other fee deficiency or overpayment under 37 C.F.R. §1.16 or 1.17 in connection with this patent application, the Commissioner is hereby authorized to charge such deficiency or overpayment to Deposit Account No. 02-2334.

Applicants submit that this application is in condition for allowance, and request that it be allowed. The Examiner is requested to call the Undersigned if any issues arise that can be addressed over the phone to expedite examination of this application.

Respectfully submitted,



Aaron L. Schwartz
Registration No. 48,181
Attorney for Applicants

Patent Department
Intervet Inc.
P.O. Box 318
29160 Intervet Lane
Millsboro, DE 19966
(302) 933-4034 (tel)
(302) 934-4305 (fax)

EXHIBIT A

time and date.com

Current location: Home page > Date menu > Duration calculator > Results
Other locations: Time zone menu | World Clock | Calendar | Countdown

Register | Log in | Customize
Search: Go



Duration calculation results

From and including: Tuesday, February 27, 2007
To, but not including: Tuesday, January 29, 2008

It is **336** days from the start date to the end date, but not including the end date

Or 11 months, 2 days excluding the end date

Alternative time units

336 days can be converted to one of these units:

- 29,030,400 seconds
- 483,840 minutes
- 8064 hours
- 48 weeks

Make a new calculation

- [Modify the current calculation](#)
- [New calculation between two other dates](#)
- [New calculation, with both date and time included](#)

Help and example use

- [How to use the Date Duration Calculator](#)

- [How to use the Time Duration Calculator](#)
- [Some typical uses for the date calculators](#)

Other calculators

- [Date Duration calculator](#) - count days between two dates
- [Find duration between two dates with time](#)
- [Date calculator](#) - add (or subtract) days, months, years to a date
- [Birthday calculator](#) - Find when you are 1 billion seconds old and more

Related tools

- [Date related services](#) - overview
- [Calendar for any year](#)
- [The World Clock](#) - Time Zones
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